G & K Services, Inc. *and* Lois Robinson, Petitioner and Southwest Regional Joint Board of Union of Needletrades, Industrial and Textile Workers, AFL–CIO. Case 15–RD–843

October 16, 2003

DECISION AND DIRECTION

BY CHAIRMAN BATTISTA AND MEMBERS LIEBMAN AND WALSH

The National Labor Relations Board, by a three-member panel, has considered objections to, and determinative challenges in, an election held December 19, 2002, and the hearing officer's report recommending disposition of them.

The election was conducted pursuant to a Stipulated Election Agreement. The tally of ballots shows 13 for and 11 against the Union, with 5 determinative challenged ballots.

The Board has reviewed the record in light of the exceptions and briefs, and has adopted the hearing officer's findings[1] and recommendations[2] as modified.

We adopt the hearing officer's finding that the Union's objections to the election were timely filed, that the Employer's challenge to the ballot of Jennifer Ellsworth should be sustained, that the Union's challenges to the ballots of Donna Martin and Lucinda Williamson should be overruled,[3] and that the Union's objections to the election should be overruled. Contrary to the hearing officer, however, we find, for the reasons set forth below, that the Union's challenge to the ballot of Raphael Chambliss should be sustained.

The Union represents employees at the Employer's New Orleans, Louisiana facility. A decertification petition was filed on November 15, 2002. The parties' Stipulated Election Agreement states that the appropriate unit is, "[a]ll production and maintenance employees employed by the Employer at its facility in New Orleans, Louisiana."

In May 2000, the Employer moved the loader/unloader position from its New Orleans facility to its Saint Rose facility. Chambliss accepted the Employer's offer of employment in June 2000 and began performing in the loader/unloader position in Saint Rose.[4] The Employer's collective-bargaining agreement with the Union requires that all bargaining unit positions must be posted for bids. In filling the loader/unloader position in Saint Rose, the Employer did not post the position.

The record shows that Chambliss performs his loader/unloader duties at the Employer's Saint Rose facility. Prior to the election, Chambliss also, on occasion, performed work at the New Orleans facility. However, there is no evidence that Chambliss' work in New Orleans prior to the election was anything but sporadic.[5] Subsequent to the election, and after his ballot had been challenged, Chambliss began filling in for a production unit worker at the New Orleans facility on a regular basis—working 1 hour each morning before reporting to Saint Rose. The record also shows that, like bargaining unit employees, Chambliss is required to wear a uniform, receives a 30-minute lunchbreak, receives Martin Luther King, Jr. Day off, and is ineligible for the Employer's 401(k) plan.

The hearing officer found that Chambliss was a bargaining unit employee. This finding was based on the determination that: (a) Chambliss' benefits were consistent with those of bargaining unit employees, (b) he had been treated as a unit employee by both the Employer and the Union; (c) Chambliss' position was integral to the New Orleans production process; and (d) although Chambliss occasionally filled in for production unit employees in New Orleans, there had been no grievance filed to that effect.

In its exceptions, the Union contends that the hearing officer erred in ignoring the parties' Stipulated Election

[1] The Union has excepted to some of the hearing officer's credibility findings. The Board's established policy is not to overrule a hearing officer's credibility resolutions unless the clear preponderance of all the relevant evidence convinces us that they are incorrect. *Stretch-Tex Co.*, 118 NLRB 1359, 1361 (1957). We find no basis for reversing the findings.

[2] In the absence of exceptions, we adopt pro forma the hearing officer's recommendation that the challenge to the ballot of Angel Cantrell be overruled.

[3] In adopting the hearing officer's recommendation to overrule the challenges to the ballots of Donna Martin and Lucinda Williamson, we find it unnecessary to pass on the Employer's exception to the hearing officer's finding that Martin and Williamson spend some of their time performing plant clerical work. The record clearly establishes that, at a minimum, Martin and Williamson spend the vast majority of their time performing bargaining unit work. The fact that they may spend a portion of their time performing plant clerical work as well does not affect their eligibility.

[4] The hearing officer's report states that Chambliss "moved" to the Saint Rose facility to fill the loader/unloader position. The record shows, however, that Chambliss was hired to fill the position and had not previously worked for the Employer.

[5] The record shows that, prior to the election, Chambliss did not work at the New Orleans facility on a regular basis. Production Manager Mahlon Norton testified that, prior to the election, Chambliss had filled in at New Orleans three or four times, and Chambliss testified that he could recall neither the number of times, nor the last time he had worked at New Orleans prior to the election.

Agreement, which excludes Chambliss because it is limited to employees working at the New Orleans facility. We find merit in this exception.

In resolving challenged ballots of disputed employees in a stipulated unit election, the initial question is "whether the intent of the parties is unambiguously manifested in the unit stipulation." *Southwest Gas Corp.*, 305 NLRB 542 fn. 6 (1991). If the objective intent of the parties is manifested, the Board gives effect to the agreement. See *Caesar's Tahoe*, 337 NLRB No. 170, slip op. at 2 (2002); *Viacom Cablevision*, 268 NLRB 633 (1984).

In the present case, the language of the unit description clearly and unambiguously describes the unit as "all production and maintenance employees employed by the Employer at its facility in New Orleans." Thus, by its clear language, the unit includes only employees at that location and, by implication, excludes production and maintenance employees employed at any other facility. See *S & I Transportation*, 306 NLRB 865 (1992).

Here, Chambliss was hired for the Saint Rose facility and, as found by the hearing officer, his job responsibilities are at that facility. Although the record indicates that Chambliss performed some work at the New Orleans facility, there is no evidence that the work he performed there prior to the election was anything but sporadic. Accordingly, we find, contrary to the hearing officer, that Chambliss was not an employee in the bargaining unit, and we shall sustain the challenge to his ballot.

DIRECTION

IT IS DIRECTED that the Regional Director shall, within 14 days from the date of this Decision and Direction, open and count the ballots of Angel Cantrell, Donna Martin, and Lucinda Williamson, and prepare and serve on the parties a revised tally of ballots, and take further appropriate action.[6]

Dated, Washington, D.C., October 16, 2003

Robert J. Battista, Chairman

Wilma B. Liebman, Member

Dennis P. Walsh, Member

(SEAL) NATIONAL LABOR RELATIONS BOARD

[6] The Union's and the Employer's exceptions to the Acting Regional Director's report on objections and challenges are still pending with the Board.